

## **REMARKS**

Claims 1-43 are pending in this application. Claims 1, 12, 25, 36, and 40 are independent claims. Favorable reconsideration and withdrawal of the current grounds of rejection are requested. In addition, allowance of the pending claims is requested.

### **Claim Rejections – 35 U.S.C. § 103(a)**

Claims 1-35 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over United States Patent Number (USPN) 5,987,429 to Martzen (“Martzen”). Claims 36-43 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over USPN 6,873,969 to Stone et al. (“Stone”). Applicants respectfully traverse these rejections.

In Applicants’ previous response, independent claim 1 was amended to recite “wherein said shipping logistics include automated variation of delivery options as a function of a time period associated with said goods and a geography-based consideration.” Independent claim 12 was amended to recite “wherein shipping options are automatically provided as a function of shipping logistics associated with certain goods.” Independent claim 25 was amended to recite “wherein said logistics are provided to said seller and said buyer via an automated system wherein identities of said seller and said buyer are maintained confidential from one another.”

As correctly noted in the Office Action, Martzen fails to explicitly teach the above identified features of independent claims 1, 12, and 25. The Office Action, however, relies on Martzen at column 5, lines 37-61 which states:

Other transaction information objects shown in FIG. 3 are purchased product or service object, transaction entities object, shipping/delivery object, and order-communication object. The product/service information identifies the type--product, service, or other such as electronic data or information. The product/service information object also includes such information as brand name, description, origin (manufacturer or service provider), category, material, etc.--for example, brand name: Smasher; description: tennis racket model #12345; origin: Winn Athletic Co., United Kingdom; category: sporting goods; material: titanium. The transaction entities information object includes the name and location of the buyer

(purchaser), seller, distributor (if any), warehouse company, shipper(s), etc. The shipping/delivery information object includes method of shipment, name of one or more shippers, transit locations of shipment. The order-communication information object includes information on how the order was placed and through what communication service provider the order was place. The order might be placed through an internet or extranet, through a telephone modem or through a cable modem, and the service provider would be an internet service provider, a telephone company or a cable company, respectively. The communication information would include the name and location of the communication service provider.

The Office Action also relies on Martzen at column 1, lines 16-23 which states:

The Internet, particularly the World Wide Web, has provide an opportunity for a dramatic expansion of electronic commerce. Goods are shopped for, purchased, paid for and in some cases delivered over the Web. Such transactions usually have multiple phases such as shopping, purchase, warehousing, shipping and delivery. Further, each of these phases from shopping to delivery of the goods typically occurs in different contractual fee or tax fee jurisdictions.

Based on the above, independent claims 1, 12, and 25 were rejected using the identical rationale that:

“Therefore it would have been obvious to one or ordinary skill in the art at the time the invention was made to modify the teachings of Martzen to include wherein said shipping logistics include automated variation of delivery options as a function of time period associated with said goods and a geography based consideration in order to document and provide customers with shipping or delivery options so they may choose the option based on their shipping needs.” (See Final Office at pages 2-3 regarding claim 1, page 5 regarding claim 12, and pages 7-8 regarding claim 25).

Applicants respectfully submit that Martzen does not disclose all of the recited features of independent claims 1, 12, and 25 and that there is no teaching, suggestion, or motivation to modify Martzen to include all of the recited features of independent claims 1, 12, and 25. Therefore, Martzen is insufficient to establish a *prima facie* case of obviousness with respect to independent claims 1, 12, and 25.

### **Independent Claim 1**

Regarding claim 1, the Examiner concludes that it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the teachings of Martzen to include wherein said shipping logistics include automated variation of delivery options as a function of time period associated with said goods and a geography based consideration. The rationale set forth in the Office Action for modifying Martzen is to document and provide customers with shipping or delivery options so they may choose the option based on their shipping needs.

Martzen is directed to “automatically tracking, calculating and electronically paying taxes, royalties and other fees associated with transactions in electronic commerce systems.” Referring to FIG. 2A of Martzen, operation 100 collects the general transaction information, operation 102 tests for a specific tax law or contractual fee applicable only a specific transaction object, and in operation 103 tax fee and other fee information is collected and stored in the tax rule and other fee rule database.

Referring to FIG. 2B of Martzen, operation 104 searches through a hierarchy of tax rules and other fee rules entered into a tax rule database and an other fee rule database based on location, i.e. jurisdiction, of each phase or event of the transaction. Operation 105 applies the rules provided by operation 104 against the transaction event object. If a rule applies, operation 105 calculates the tax or other fee according to the rule. Once the general tax fee rules are tested for all locations of a transaction, the specific tax fee rules are checked by operation 106.

Referring to FIG. 2C, the fee payment operation 108 works on the general tax/fee objects and specific tax/fee objects stored in the payments database. In the case of taxes, operation 108 reads the government entity to be paid and the amount of the payment. In the case of fees, operation 108 reads the recipient to be paid and the amount of the payment. Multiple payments to the same entity are accumulated. Each payment is identified with a transaction, with the tax liable entity and any other information from the transaction that may be required by the tax law or the other fee conditions. Operation 108 checks for the method of payment; i.e., check, electronic transfer, etc. The payment is then made by operation 108 and the tax objects paid are marked paid in the payment database.

As correctly noted in the Office Action, Martzen fails to explicitly teach “wherein said shipping logistics include automated variation of delivery options as a function of a time period associated with said goods and a geography-based consideration,” recited in independent claim 1.

While Martzen is directed to tracking multiple phases of an electronic transaction, such as shopping, purchase, warehousing, shipping and delivery, Martzen clearly does not teach or suggest a system to provide financial logistics and shipping logistics for completing a sale of goods without requiring interaction between a buyer and a seller.

Further, although the portion of Martzen cited by the Examiner (i.e., column 5, lines 37-61) does disclose “The shipping/delivery information object includes method of shipment, name of one or more shippers, transit locations of shipment,” there is no teaching or suggestion in Martzen to provide shipping logistics, wherein said shipping logistics include automated variation of delivery options.

And, there is clearly no teaching or suggestion in Martzen to provide shipping logistics, wherein said shipping logistics include automated variation of delivery options as a function of a time period associated with said goods and a geography-based consideration.

Applicants also submit that Martzen fails to teach or suggest, either expressly or impliedly, the desirability of making the alleged modification to arrive at such feature. Applicants respectfully remind the Examiner that a rejection based on obviousness is improper without a motivation to modify the cited reference. *See e.g.*, MPEP § 2142. To support a conclusion that the claimed invention is directed to obvious subject matter, either the reference must expressly or impliedly suggest the claimed invention or the examiner must present a convincing line of reasoning as to why the artisan would have found the claimed invention to have been obvious in light of the teachings of the references.” *Id.*

Although the portion of Martzen cited by the Examiner (i.e., column 5, lines 37-61) does disclose “The shipping/delivery information object includes method of shipment, name of one or more shippers, transit locations of shipment,” there is no express or implied suggestion in Martzen to include shipping logistics, wherein said shipping logistics include automated variation of delivery options. And, there is clearly

no express or implied suggestion in Martzen to include shipping logistics, wherein said shipping logistics include automated variation of delivery options as a function of a time period associated with said goods and a geography-based consideration.

Nevertheless, the Examiner alleges that it would have been obvious to modify Martzen to include the missing language of claim 1 in order to document and provide customers with shipping or delivery options so they may choose the option based on their shipping needs.

Applicant submits that this rationale set forth in the Office Action is unsupported and insufficient to establish obviousness with respect to independent claim 1. Namely, Martzen fails to teach or suggest, either expressly or impliedly, the desirability of providing a customer with shipping or delivery options so that they may choose the option based on their shipping needs. And, even assuming that Martzen could be modified to include shipping or delivery options, which Applicants do not admit, there would still be no teaching or suggestion to provide shipping logistics that include automated variation of delivery options as a function of a time period associated with said goods and a geography-based consideration.

Without proper motivation to modify Martzen to arrive at invention of independent claim 1, the rejection based on obviousness is improper. The motivation to make the alleged modification must be found either in Martzen or in the knowledge generally available to a person of ordinary skill in the art.

Here, the Office Action does not adequately support its conclusion of obviousness and fails to present a convincing line of reasoning as to why a person of ordinary skill in the art would have found the features of claim 1 to have been obvious in view of the teachings of Martzen. Rather, the Office Action merely concludes that it would have been obvious to modify Martzen to include the missing claim language. This line of reasoning to provide customers with shipping or delivery options so that customers may choose the option based on their shipping needs is circular, unsupported, and based on impermissible hindsight.

For at least the reasons set forth above, Applicants request reconsideration and withdrawal of the obviousness rejection of independent claim 1.

### **Dependent Claims 2-11**

Applicants submit that dependent claims 2-11 are allowable by virtue of their dependency from independent claim 1 for at least the reasons discussed above.

In addition, Applicants submit that grounds of rejection provided by the Office Action are insufficient to render claims 2-11 unpatentable on their merits. To support the rejection of dependent claim 2-11, the Office Action cites Martzen at column 1, lines 56-67, column 2, lines 1-67, and columns 3-8 lines 1-67. It is noted that the cited portions amount to practically the entire disclosure of Martzen with the exception of the Background and the claims. Applicants submit that these blanket rejections fail to properly address each of the features of claims 2-11.

For example, with respect to claim 5, Applicants submit that the cited portions of Martzen fail to adequately teach or fairly suggest event tickets. With respect to claim 6, Applicants submit that the cited portions of Martzen fail to adequately teach or fairly suggest said shipping logistics include electronically transferring said event tickets from said seller to said buyer. With respect to claim 6, Applicants submit that the cited portions of Martzen fail to adequately teach or fairly suggest said shipping logistics include arranging for a courier to receive said goods from said seller and to deliver said goods to said buyer.

With respect to claims 3, 4 and 8-10, for example, Applicants submit that the cited portions of Martzen fail to adequately teach or fairly suggest providing said shipping logistics by use of at least one geography-based and time-based strategy (claim 3); time-sensitive goods (claim 4); said system utilizes said at least one geography-based and time-based strategy to provide said seller with a latest possible time for said sale to end (claim 8); said system is adapted to receive a sale price for said goods from a seller and to present said goods for sale at said sale price, said system being further adapted to selectively reduce said sale price by a predetermined amount upon expiration of a predetermined time period (claim 9); and/or said system further utilizes said at least one geography-based and time-based strategy to provide said buyer with at least one option for shipping said goods with at least one courier (claim 10).

For at least the reasons set forth above, Applicants request reconsideration and withdrawal of the obviousness rejection of dependent claims 2-11.

### **Independent Claim 12**

Regarding claim 12, the Examiner concludes that it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the teachings of Martzen to include wherein said shipping logistics include automated variation of delivery options as a function of time period associated with said goods and a geography based consideration. The rationale set forth in the Office Action for modifying Martzen is to document and provide customers with shipping or delivery options so they may choose the option based on their shipping needs.

Applicants submit that the Office Action does not adequately support its conclusion of obviousness and fails to present a convincing line of reasoning as to why a person of ordinary skill in the art would have found the features of claim 12 to have been obvious in view of the teachings of Martzen for at least the reasons given above with respect to independent claim 1.

Additionally, it is pointed out that independent claim 12 recites among its other elements, "wherein shipping options are automatically provided as a function of shipping logistics associated with certain goods."

In view of the above, Applicants submits that the grounds of rejection in the Office Action do not properly address the features of independent claim 12.

For at least these reasons, Applicants request reconsideration and withdrawal of the obviousness rejection of independent claim 12.

### **Dependent Claims 13-24**

Applicants submit that dependent claims 13-24 are allowable by virtue of their dependency from independent claim 12 for at least the reasons discussed above.

In addition, Applicants submit that grounds of rejection provided by the Office Action are insufficient to render claims 13-24 unpatentable on their merits. To support the rejection of dependent claim 13-24, the Office Action again cites Martzen at column 1, lines 56-67, column 2, lines 1-67, and columns 3-8 lines 1-67 amounting to practically the entire disclosure of Martzen with the exception of the Background and the claims. Applicants submit that these blanket rejections fail to properly address each of the features of claims 13-24.

For example, with respect to claims 13-24, Applicants submit that the cited portions of Martzen fail to adequately teach or fairly suggest said first, second and third portions each comprise at least one interactive Web page (claim 13); said first portion is adapted to determine a last sale time, based upon said location of said goods, a point of last delivery, and an expiration time of said goods (claim 14); said fourth portion is further adapted to receive confirmation from a seller, and to charge said credit card only after receiving said confirmation (claim 15); said fifth portion is further adapted to determine at least one shipping option based upon said point of last delivery and said expiration time of said goods (claim 16); said fifth portion is further adapted to present said at least one shipping option for selection by said buyer (claim 17); said fifth portion is integrated with at least one computer system of a shipping courier (claim 18); said second portion is further adapted to selectively reduce said desired sale price by a predetermined amount upon expiration of a predetermined time period (claim 19); said second portion is further adapted to selectively vary said desired sale price based upon market conditions (claim 20); time-sensitive goods (claim 21); event tickets (claim 22); said fifth portion is further adapted to electronically transfer said event tickets from said seller to said buyer (claim 23); and/or said point of last delivery is a venue location of said event and said expiration time is a time of said event (claim 24).

For at least the reasons set forth above, Applicants request reconsideration and withdrawal of the obviousness rejection of dependent claims 13-24.

#### **Independent Claim 25**

Regarding claim 25, the Examiner concludes that it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the teachings of Martzen to include wherein said shipping logistics include automated variation of delivery options as a function of time period associated with said goods and a geography based consideration. The rationale set forth in the Office Action for modifying Martzen is to document and provide customers with shipping or delivery options so they may choose the option based on their shipping needs.

Applicants submit that the Office Action does not adequately support its conclusion of obviousness and fails to present a convincing line of reasoning as to why a

person of ordinary skill in the art would have found the features of claim 25 to have been obvious in view of the teachings of Martzen for at least the reasons given above with respect to independent claim 1.

Additionally, it is pointed out that independent claim 25 recites among its other elements, “wherein said logistics are provided to said seller and said buyer via an automated system wherein identities of said seller and said buyer are maintained confidential from one another.”

In view of the above, Applicants submits that grounds of rejection in the Office Action do not properly address the features of independent claim 25.

For at least these reasons, Applicants request reconsideration and withdrawal of the obviousness rejection of independent claim 25.

#### **Dependent Claims 26-35**

Applicants submit that dependent claims 26-35 are allowable by virtue of their dependency from independent claim 25 for at least the reasons discussed above.

In addition, Applicants submit that grounds of rejection provided by the Office Action are insufficient to render claims 26-35 unpatentable on their merits. To support the rejection of dependent claim 26-35, the Office Action again cites Martzen at column 1, lines 56-67, column 2, lines 1-67, and columns 3-8 lines 1-67 amounting to practically the entire disclosure of Martzen with the exception of the Background and the claims. Applicants submit that these blanket rejections fail to properly address each of the features of claims 26-35.

For example, with respect to claims 26-35, Applicants submit that the cited portions of Martzen fail to adequately teach or fairly suggest time-sensitive goods (claim 26); event tickets (claim 27); said event tickets are electronically transferred from said buyer to said seller (claim 28); said event tickets are physically transferred from said buyer to said seller (claim 29); said step of confirming said buyer's ability to pay for said goods includes authorizing a credit card of said buyer (claim 30); said step of receiving payment from said buyer includes charging said credit card (claim 31); confirming said seller's ability to provide said certain goods prior to charging said credit card (claim 32); said step of providing said information to at least one prospective buyer is performed by

use of a Web site (claim 33); said step of arranging for said certain goods to be transferred from said seller to said buyer includes determining a plurality of shipping options by use of a geography and time-based strategy, and providing said plurality of shipping options to said buyer (claim 34); and/or each of said steps is performed without disclosing the identities of said buyer and said seller to one another (claim 35).

For at least the reasons set forth above, Applicants request reconsideration and withdrawal of the obviousness rejection of dependent claims 26-35.

#### **Independent Claim 36**

Independent claim 36 recites “arranging for a courier to receive said at least one event ticket from said seller and deliver said at least one event ticket to said buyer, according to said selected shipping option.”

Applicants submit that grounds of rejection in the Office Action do not properly address at least this feature of independent claim 36. For example, Stone is directed to electronic or virtual delivery options and does not teach or suggest arranging for a carrier. Accordingly, Applicants request reconsideration and withdrawal of the obviousness rejection of independent claim 36 for at least this reason.

#### **Independent Claim 40**

Independent claim 40 recites “providing an interactive page on said Web site which automatically displays all events remaining in said season ticket package to said seller.”

Applicants submit that grounds of rejection in the Office Action do not properly address at least this feature of independent claim 40. Namely, Stone fails to teach or suggest interactive web pages for season tickets. Accordingly, Applicants request reconsideration and withdrawal of the obviousness rejection of independent claim 40 for at least this reason.

#### **Dependent Claims 37-39 and 41-43**

Applicants submit that dependent claims 37-39 and 41-43 are allowable by virtue of their dependency from independent claim 36 for at least the reasons discussed above.

In addition, Applicants submit that the blanket grounds of rejection provided by the Office Action which cite column 5, lines 13-67 and column 13, lines 65-67 and column 16-47 lines 1-67 and column 60, lines 30-63 are insufficient to render claims 37-39 and 41-43 unpatentable on their merits.

For at least the reasons set forth above, Applicants request reconsideration and withdrawal of the obviousness rejection of dependent claims 37-39 and 41-43.

### **Conclusion**

For at least the reasons set forth above, Applicants respectfully request reconsideration and withdrawal of the § 103(a) rejections of claims 1-43 and a timely Notice of Allowance to this effect.

Applicants respectfully request entry of this Response after final at least because:

- (i) the arguments clearly demonstrate that the case is in condition for allowance and/or
- (ii) the arguments place the case in better form and simplify the issues for appeal.

In the event that the Examiner does not believe that this case is in condition for allowance, Applicants respectfully request entry of this Response after final at least because the arguments place the case in better form for appeal.

Applicants respectfully direct the Examiner to MPEP § 714.13 and remind the Examiner that the refusal to enter a response should not be arbitrary. Rather, the response should be given sufficient consideration to determine whether the claims are in condition for allowance and/or whether the issues on appeal are simplified.

The Examiner is invited to contact the undersigned to discuss any matter concerning this application. The Office is hereby authorized to charge any additional fees or credit any overpayments under 37 C.F.R. § 1.16 or § 1.17.

Serial No. 09/967,171  
Response Dated October 22, 2007  
Reply to Final Office Action of June 20, 2007

Respectfully submitted,  
KACVINSKY LLC



---

Robert V. Racunas, Reg. No. 43,027  
Under 37 CFR 1.34(a)

Dated: October 22, 2007

4500 Brooktree Road, Suite 102  
Wexford, PA 15090  
(724) 933-5529